

In the Matter of:)
)
Advanced Television Systems) MB Docket No. 87-268
And Their Impact upon the Existing)
Television Broadcast Service)
)

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stations' noise-limited contours to cover substantially the same populations as their NTSC service, it is possible, if not likely, that severe limitations in signal strength in the primary market area will limit the ability of the stations to be received on an indoor antenna. 2/

The substitution of operating values for the BlueStone stations is not explained in the *Seventh FNPRM*. Although paragraph 18 states that the studies leading to the new table were done in accordance with Sections 63.622(e) and 73.623(c) of the Rules, elsewhere it appears that the results were *not* obtained on the basis of the 2.00 percent interference standard contained in those provisions, but rather on the basis of the *ad hoc* 0.1 percent interference criterion first utilized in the *Report and Order*, "Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television," 19 FCC Rcd 18279 (2004) ("*Second Periodic Review Order*"). That order, in turn, adopted in considerable part the multi-step channel election process that had been propounded by the Association of Maximum Service Television, Inc. ("MSTV"), in a May 2004 *ex parte* presentation that included, in a footnote, the following conclusory statement:

For purposes of the election process only, interference of less than 0.1% would qualify as "no interference"; interference of 0.1% or greater would be considered interference for purposes of this procedure. 3/

2/ The BlueStone stations for which very low power levels have been allotted are WCYB-TV, Bristol, Virginia, (Fac. ID 2455); KRCR-TV, Redding, California (Fac. ID 8291); KECI-TV, Missoula, Montana (Fac. ID 18084); KCFW-TV, Kalispell, Montana (Fac. ID 18079); and KTVM(TV), Butte, Montana (Fac. ID 18066). BlueStone also is the licensee of KAEF(TV), Arcata, California (Fac. ID 8263), and KTXS-TV, Sweetwater, Texas (Fac. ID 308). The information provided for these stations in the proposed DTV Table of Allotments is consistent with other available information and does not appear at this time to require revision.

3/ See "Special Submission of the Association of Maximum Service Television, Inc. on the DTV Channel Election and Repacking Process," MB Docket No. 03-15, dated May 6, 2004, at 6 n.7 ("*MSTV Ex Parte Presentation*").

For its part, the *Second Periodic Review Order* also relegated the matter of a new interference limitation to a footnote, similarly devoid of any technical analysis or policy justification:

We agree with MSTV that “protect” in this context should mean that a subsequent election may not cause interference any greater than existing interference plus no more than 0.1 percent additional reduction in service population. *See MSTV Ex Parte* at 6, n.7.

19 FCC Rcd at 18298 n.97. In short, neither the MSTV *Ex Parte* Presentation nor the *Second Periodic Review Order* advances any empirical basis for the 0.1 percent interference limitation.

The absence of any justification for the adoption of the 0.1 interference limitation represents a *de facto* reversion to the zero-tolerance interference standard the Commission expressly rejected several years ago. Indeed, in the *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order*, “Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service,” 13 FCC Rcd 7418, 7450-51 (1998) (“*Reconsideration Order*”), the Commission agreed with petitioners-- including MSTV ^{4/} -- that a two-percent *de minimis* standard for permissible new interference “is needed to provide flexibility for broadcasters in the implementation of DTV.” Significantly, in urging the Commission to abandon its zero-tolerance policy, MSTV argued that a two-percent *de minimis* standard was appropriate because any resulting interference would affect viewers only at the outer edges of a station’s Grade B contour where “service is already typically degraded and cable service has higher penetration.” MSTV 1997 Proposal at 4. Ultimately, MSTV emphasized, the FCC’s digital allotment methodology and procedures “recognize that we cannot exist in an interference free world.” *Id.* at 7.

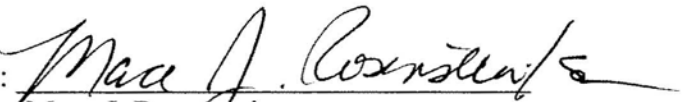
^{4/} See “Joint Response to Ex Parte Submissions of MSTV and ALTV, In the Matter of Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service,” MM Docket No. 87-268, filed December 17, 1997 (“MSTV 1997 Proposal”).

Nothing in the MSTV *Ex Parte* Presentation, the *Second Periodic Review Order* or the *Seventh FNPRM* provides any basis for the Commission's apparent reversal of its earlier conclusion, derived after reasoned analysis, that a *de minimis* amount of new interference is an unavoidable, and acceptable, aspect of the digital transition. Television station licensees have relied on this guidance in good faith for eight years. The reversal of this conclusion, late in the digital transition, is the sort of disruption the Commission had in mind when it acknowledged that midstream process changes "raise issues of fair and consistent treatment of applicants and stations." 5/

Accordingly, BlueStone respectfully requests that the proposed DTV Table of Allotments be amended to specify the values for the stations listed herein consistent with the values previously allotted.

Respectfully submitted,

BLUESTONE LICENSE HOLDINGS INC.

By: 
Mace J. Rosenstein
Tarah S. Grant

HOGAN & HARTSON LLP
Columbia Square
555 13th Street NW
Washington, D.C. 20004-1109
202-637-5600

Its Attorneys

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5/ See *Memorandum Opinion and Order on Reconsideration*, "In the Matter of Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television," 16 FCC Rcd 20594, 20616 (2001) (declining to consider a new approach to interference population analysis).